# ASSASSINATION BILLS

## HEARING

BEFORE THE

## SUBCOMMITTEE ON CRIMINAL LAW

OF THE

## COMMITTEE ON THE JUDICIARY

## UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

## S. 904

A BILL TO AMEND TITLE 18 TO PROVIDE PENALTIES FOR THE ASSAULT OR MURDER OF PRESIDENTIAL AND VICE PRESIDENTIAL STAFF MEMBERS

AND

## S. 907

A BILL TO AMEND SECTION 351 OF CHAPTER 18 OF TITLE 18 OF THE UNITED STATES CODE TO INCLUDE CABINET OFFICERS, AND FOR OTHER PURPOSES

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# ASSASSINATION BILLS

TUESDAY, SEPTEMBER 22, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.*

The subcommittee met at 2:55 p.m., in room 5110, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee), presiding.

Staff present: Michael Klipper, chief counsel, and Mark Reiff, legislative intern, Subcommittee on Criminal Law; Pat Sorrensen, professional staff, Senator Laxalt; and Kevin Mills and Bruce Cohen, professional staff, Senator Arlen Specter.

## OPENING STATEMENT OF CHAIRMAN CHARLES McC. MATHIAS

Senator MATHIAS. The committee will come to order. The Chair wants to express its apology for the late hour at which we are starting, but this is an unusual institution. I was involved in the meeting with the President of El Salvador which was an involvement which lasted longer than I anticipated.

But we will immediately call to the chair the Honorable D. Lowell Jensen, Assistant Attorney General in charge of the Criminal Division.

In view of the delay, the Chair will forgo any opening statement, which will be included in the record. Also, I wish copies of S. 904 and S. 907 be included.

[The prepared statement of Senator McC. Mathias and a copy of S. 904 and S. 907 follow:]

PREPARED STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Today the Subcommittee on Criminal Law turns its attention to two bills, designed to complement federal law dealing with violent crimes against high-ranking Government officials. S. 904, introduced by Senator Quayle, would make it a Federal offense to assassinate, kidnap, or assault a Presidental or Vice Presidential staff member. S. 907, sponsored by Senators Thurmond and Zorinsky, would create Federal jurisdiction over the same categories of criminal acts when directed at cabinet officers.

Crimes against senior Government officials have been a problem throughout our nation's history. Beginning with the unsuccessful attempt on the life of President Andrew Jackson in 1835, there have been over 35 reported violent crimes directed at high Federal Government officials. Yet, it was not until 1965, in the aftermath of the assassination of President John F. Kennedy, that Congress first acted to assert Federal jurisdiction over such crimes. At that time, Congress passed and President Lyndon Johnson signed into law the Presidential Assassination Penalty Act. Six years later, following the murder of Senator Robert F. Kennedy, Congress enacted a proposal providing Federal jurisdiction over certain crimes against Members and Members-elect of Congress.

Now, another act of violence is prompting congressional consideration of bills to extend further the reach of Federal jurisdiction over crimes against Federal officials. Just six months ago, President Reagan and others, including Presidential Press Secretary James Brady, were wounded in an attempt on the President's life. Both S. 904 and S. 907 were introduced in response to this recurrence of violence. Congress is now being asked to determine whether or not the crimes of assassinating, kidnaping, or assaulting cabinet officers and Presidential and Vice Presidential staff members should also be brought within the purview of Federal criminal jurisdiction. In making this determination, Congress must analyze a number of important issues, including:

Is there a sufficiently compelling Federal interest to justify the proposed extension of Federal jurisdiction?

Are State laws adequate to handle the problems addressed by the proposal?

If some form of extention is warranted, should it cover Cabinet members and Presidential and Vice-Presidential aides at all times or should it be limited to those instances when the individuals are acting in their official capacity?

To help the subcommittee answer these and related questions, we are pleased to welcome Lowell Jensen, Assistant Attorney General, Criminal Division, Department of Justice. We look forward to your testimony. Please begin.

97TH CONGRESS
1ST SESSION

# S. 904

To amend title 18 to provide penalties for the assault or murder of Presidential and Vice Presidential staff members.

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IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 16), 1981

Mr. QUAYLE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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# A BILL

To amend title 18 to provide penalties for the assault or murder of Presidential and Vice Presidential staff members.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1751 of title 18, United States Code, is amended in subsection (a)—

(1) by inserting after "laws of the United States," the following: "or any person traveling on official business with the President or Vice President who is employed to assist such President or Vice President,"; and

(2) by adding before the period the following: ", except that notwithstanding any other provision of law, the court shall not suspend any sentence imposed pursuant to such section or make such sentence probationary, nor shall the term of imprisonment imposed pursuant to such sections run concurrent with any term of imprisonment imposed for the commission of any other felony for which such person has been convicted".

97TH CONGRESS
1ST SESSION

# S. 907

To amend section 351 of chapter 18 of title 18 of the United States Code to include Cabinet officers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 8 (legislative day, FEBRUARY 16), 1981

Mr. THURMOND (for himself and Mr. ZORINSKY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To amend section 351 of chapter 18 of title 18 of the United States Code to include Cabinet officers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 18 of title 18, United States Code, is amended as follows:

(a) Subsection (a) of section 351 is amended by inserting ", or a member of the executive branch of government who is the head of a department listed in section 101 of title 5" following the words "Member-of-Congress-elect".

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(b) The section heading for section 351 is amended to read:

**"§ 351. Congressional and Cabinet assassination, kidnaping, and assault; penalties".**

(c) The chapter heading is amended to read as follows:

**"CHAPTER 18—CONGRESSIONAL AND CABINET ASSASSINATION, KIDNAPING, AND ASSAULT".**

(d) The table of contents to "Part I.—Crimes" of title 18 is amended by striking out the chapter reference and inserting in lieu thereof the following:

**"18. Congressional and Cabinet assassination, kidnaping, and assault".**

**STATEMENT OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY ROGER A. PAULEY, DIRECTOR, OFFICE OF LEGISLATION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE**

Mr. JENSEN. Thank you, Mr. Chairman. As a long-term prosecutor I am used to continuances as a part of the business. So, I certainly appreciate it.

Senator MATHIAS. In the days when I earned an honest living as a lawyer, I always felt that was the most frustrating part of the day when you sat in the courtroom and waited for other people.

Mr. JENSEN. That is right.

Let me see if I can in effect expurgate this and present the testimony.

I am pleased to be here, Mr. Chairman, to present the views of the Department of Justice on S. 904 and S. 907, bills that are designed to create Federal jurisdiction over serious crimes against Cabinet officers and Presidential staff.

Currently, the President, the Vice President and Members of Congress are covered by Federal statutes against murder, kidnaping, and assault, but the officials addressed in these two bills enjoy no comparable protection. Those crimes against Cabinet members or Presidential aides today may be proceeded against only under applicable State laws and the District of Columbia Code.

The Department of Justice believes that there is a strong Federal interest in vindicating crimes of violence directed at high-level Federal officials and therefore, while we will suggest ways in which the language of these bills may be improved, we support the concept of both S. 904 and S. 907.

Cabinet officers and senior White House aides are key members of the executive branch who preside over whole departments of Government and directly advise the President on matters of policy. Of necessity, these Federal officials become concerned with controversial issues and become easily recognized by large numbers of persons—factors which can, unfortunately, make them a target for a terrorist or a disturbed individual.

The importance to the U.S. Government of the duties performed by these officials, coupled with their high visibility and vulnerability, in our view make it appropriate and important that violent criminal acts against them be subject to Federal sanctions.

As to specific provisions of the bills, S. 904 amends section 1751 of title 18 which presently makes it a Federal crime to kill the President, the President-elect, the Vice President, or the person next in line to the Presidency if there is no Vice President. Similarly, it covers kidnaping, attempted killing, the conspiracy to kill, or assault upon those same persons.

S. 904 would add to the list of protected persons "any person traveling on official business with the President or the Vice President who is employed to assist such President or Vice President." In addition, S. 904 would amend the penalty for murder or manslaughter of any person listed in that section by prohibiting a suspended, concurrent, or probationary sentence for anyone convicted of a violation of that section.

While we believe there is a definite Federal interest in protecting senior Presidential and Vice Presidential aides, the scope of protection afforded by S. 904 is, in our view, in one sense too narrow and in another sense too broad.

Let me pause for just a moment to make sure that there is no misunderstanding by the phraseology. I spoke of "protected persons" being within this new bill. I do not mean by that to imply that the bill carries with it any designation of resources by Secret Service to physically protect. The words "protected" persons and "protection" in this sense are meant to refer to the statutory expansion rather than to any change or commission of resources for physical protection.

In the sense of being overly broad, it does cover attacks on lower-level employees who frequently are a part of the Presidential party on extended trips. While there may be merit in asserting Federal jurisdiction over some attacks on such persons, such jurisdiction, we believe, should be limited to situations where the assault was to interfere with or as a result of the victim's performance of duties or status as a Presidential employee.

Jurisdiction over crimes against nonsenior Presidential or Vice Presidential aides could more appropriately be accomplished by an amendment to title 18, United States Code, section 1114, which presently contains a long list of federally employed persons such as law enforcement officers and judges protected from murder or assault while engaged in or on account of their performance of official duty.

Since, however, amendment of 1114 introduces other issues and problems worthy of separate attention, the committee may wish to reserve this subject matter for another occasion and confine this legislation to those especially important categories of persons who should be protected by Federal law against violent acts, irrespective of any other "Federal nexus" for the crime such as the performance of official duty.

Thus, for purposes of this legislation, we recommend that Federal jurisdiction over attacks on Presidential and Vice Presidential aides be limited to the most senior officials, and that Federal jurisdiction should attach without a showing that an attack occurred while he was accompanying the President or was connected with the victim's official duties.

Showing that the attack was motivated by the victim's duties is an element that will likely be present, but that could be difficult to prove in a particular case.

As with the protection afforded Members of Congress in title 18, United States Code, section 351, the "official duty" nexus should not be required. Specifically, we suggest that protection be given to persons employed in the Executive Office of the President or in the Office of the Vice President authorized to receive pay equal to that which applies for positions at level II of the Executive Schedule.

The President is authorized to appoint 25 such persons and the Vice President 5. This is covered by title 3, United States Code, sections 105 and 106. At present, less than 20 persons would be covered by this addition to the bill.

S. 907 amends section 351 of title 18, to extend to each Cabinet officer, defined as a member of the executive branch of Govern-

ment who is the head of a department listed in title 5, United States Code, section 101, the protection presently accorded by section 351 to Members of Congress and Members of Congress-elect.

The effect of this bill would be to create Federal jurisdiction over the offenses of murder, kidnaping attempts and conspiracies to commit these crimes—as well as assaults directed at Cabinet officers.

For the reasons previously stated, we strongly support this proposal which, we also note, was included in S. 1722, the Criminal Code reform bill approved by the committee last Congress.

We have two suggestions regarding S. 907. First, we urge that in addition to Cabinet officers the second ranking official in each department should be covered. The second ranking official in each department frequently acts for the Cabinet officer and generally shares his or her high responsibilities. This person is the one in each department designated to act for the head of that department in accordance with the delegation of authority or succession order.

Specifically, we suggest that section 351(a) be amended so that its coverage includes "a member of the executive branch of Government who is the head of a department listed in section 101 of title 5 or the second ranking official in such department."

Second, when considering this legislation, we recommend the committee take note of the fact that an attack on a Supreme Court Justice is not now a Federal crime.

Section 1114 includes the killing of "any judge of the United States." That term, in our view, does not include Supreme Court Justices. In our view, Supreme Court Justices, as the highest ranking representatives of the judicial branch of our Government, and persons formally nominated to fill vacancies on that Court, should have the same protection as the President, the Vice President, and Members of Congress.

A proposal to accord Supreme Court Justices such protection was also included in last year's Federal Criminal Code Revision bill, favorably reported by the committee, and is embodied in this year's code reform measure recently introduced as S. 1630.

This coverage in a separate bill could perhaps best be accomplished by adding a new section at the end of chapter 51 of title 18, specifically proscribing the killing, kidnaping, or assault upon a Justice of the Supreme Court or a nominee.

The extension of Federal protection from attacks to senior Presidential staff members and Cabinet officers is clearly desirable, and it is our hope that the committee will quickly consider and favorably recommend S. 904 and S. 907 with the changes we have suggested.

Mr. Chairman, that completes my statement. I would be pleased to try to answer any questions you may have.

### HISTORICAL NECESSITY

Senator MATHIAS. I do have some questions. I think we need to think a little bit about this legislation, the need for it, the purpose of it, the benefits that may flow from it.

The first instance of an attack upon a high Federal official of which I am aware from a reading of history is the attempt made on

the life of Andrew Jackson in 1835, approximately 150 years ago. There have been 30-odd such crimes in the intervening years.

But it was not until the assassination of President Kennedy that a violent attack on a Federal official was considered to be something different in the law than an attack on any man or woman, an ordinary citizen of the United States.

Why is it that you feel that this pending legislation would in some way improve the ability of law enforcement officials to investigate and to prosecute and, of course most desirably, to prevent crimes of violence against Federal officials?

Mr. JENSEN. Of course the prevention aspect is one that is separate from the legislation itself. There can be prevention activities that occur without legislation. In a sense, prevention can occur from a portion of the legislation which makes it clear that there be Federal investigative resources committed to any of these attacks. That is one of the reasons why one moves to a Federal definition.

You also have the situation where although you may have underlying State and local offenses, there is no real uniformity to the kinds of sanctions or activities that flow from attacks at the State and local level, if that is the only way of getting at the crime.

This imposes a national responsibility on the investigative forces and the prosecutive forces of the Federal Government to respond to these kinds of attacks with this high a level of Government official.

As we pointed out, in this day and age of communication there is a new and increased level of visibility and vulnerability because of the positions these persons occupy. That is part of the definitional process, to make sure that that coverage occurs.

Senator MATHIAS. Unhappily, we do recognize that there is an increased vulnerability. There is an effect which we observed, unhappily, in the past year in which there was an attempt to assassinate the President of the United States, followed closely by an attempt to assassinate the Pope.

You cannot draw any direct relationship between these two, but the fact that the first was widely covered on a global basis on television and other news media may have had an influence on the second. But in any event, there is a rash of these events. So, I agree with that.

On the other hand, how do you see the actual investigation improve? Now, in the case of the assassination of President Kennedy, although there was no law on the books, the FBI was immediately involved as well, of course, as the Secret Service.

What additional factor will this legislation generate?

Mr. JENSEN. The statute already has within it a relatively peculiar jurisdictional base where although you may have concurrent jurisdiction, there is a specifically defined Federal paramount jurisdiction "whenever the Federal interest is asserted," the way the legislation reads.

So, there is no question that if you are within the list of persons covered by this statute the Federal investigation, once asserted, is paramount.

In any effective investigation it has to be clear where the responsibility lies. I think that in this instance you do create a situation where the assertion of Federal investigative paramount interest

puts the FBI in a position where there is no question about their responsibility or their carrying through such an investigation.

FEDERAL AUTHORITY

Senator MATHIAS. This is the important point that I wanted to elicit. Of course, this would be the paramount assertion of Federal authority and it would preempt the State's. If there were some local sheriff who was attempting to take charge, there could not be any question of disputed authority under the circumstances.

Mr. JENSEN. That is correct.

Senator MATHIAS. That runs a little bit counter to the general philosophy of the Reagan administration.

Mr. JENSEN. In terms of the federalism, the essential principles of federalism?

Senator MATHIAS. I would go back. One of the delightful privileges of serving on this committee was the opportunity to know the great Senator from North Carolina, Sam Ervin.

When the legislation was originally introduced for making it a Federal crime to commit an act of violence against a Member of Congress, Senator Ervin spoke in opposition. He was against making an attack on a Member of Congress a Federal crime. Maybe he felt it was justified in some circumstances. [Laughter.]

Mr. JENSEN. It may be.

Senator MATHIAS. You laugh when you say that now.

Mr. JENSEN. I am not agreeing.

Senator MATHIAS. When you have had a little longer experience, you may say it with a great deal of sincerity.

But he was convinced that the Federal Government was intruding into an area of proper State concern; that the investigation and the prosecution of crime was a State matter and that this was a role in which the States should not be disturbed in their constitutional duties and responsibilities.

Of course, he foresaw—I do not recall his arguments in detail, but I think part of his concern was that once you begin down this road, carving out an area of criminal law and saying, "Now this, although for 150 years this has been a State responsibility, now the Federal Government is taking it over," and if you do it in connection with Members of Congress, that sooner or later that area of jurisdiction will be expanded and the Federal Government will grow steadily more powerful.

Now, do you see these bills as the latest step in that process that was referred to by Senator Ervin?

Mr. JENSEN. In a sense, if one takes Senator Ervin's argument, there is no justification for a Federal presence in violent crime. I think that we are beyond that. I think we have obviously accepted in the legislation that is presently on the books that there is a reason and a rationale for Federal presence.

One of the things that occurs to me that ought to be borne in mind is that not only do we have an age of instant communication, we have an age of virtually unlimited mobility.

We have a situation where on frequent occasions we will find a need for instantaneous investigation which spans all kinds of jurisdictional lines; that once we get to a situation where we can have

the Federal Bureau of Investigation put into these kinds of cases, we solve all kinds of jurisdictional problems.

We have an age where we do have a mobile society. We have an age where we need to move very quickly on this. I think Senator Ervin may be persuaded that there is a reason to have some Federal presence when you have that kind of a situation.

Senator MATHIAS. Of course, to think of it from your point of view, too, Federal officials tend to be peripatetic.

Mr. JENSEN. Yes, they do. By definition, they must be.

Senator MATHIAS. The President is on the west coast, he is on the east coast. He is in the North, he is in the South, so that the concept of a State defending or avenging its own citizens is not quite the element which is in the classic and historic mold.

Mr. PAULEY. I was just going to add that an additional factor is that if the attack occurs outside the United States, of course, it would not be within the realm or the power of State jurisdiction to vindicate the offense and only if there were Federal jurisdiction could that occur.

EXTRATERRITORIAL EFFECT

Senator MATHIAS. Now, are you claiming that this would have extraterritorial effect?

Mr. JENSEN. Yes. It is our position that the present statutory structure has extraterritorial effect. There is an example in contemporary prosecution of the case in the Northern District of California where the charge involved 351, in Congressman Leo Ryan's case.

Senator MATHIAS. I followed that with some interest and with some question. But you would accord extraterritorial effect to the executive branch as well?

Mr. JENSEN. That is correct.

Senator MATHIAS. So that if a high Federal official visiting some foreign capital were to be assassinated or wounded in an assassination attempt, that would be a crime under the laws of the United States of America, notwithstanding the fact that it occurred in the Republic of France or in some other foreign country.

Mr. JENSEN. That is a part of the present legal construct. It is a question of the statutory intent that is involved. If there is any question about that, we would suggest that the legislative intent be made clear on that. But it is our position that the present legislative construct includes that jurisdiction.

Senator MATHIAS. Can you point to any specific language that has that consequence?

Mr. JENSEN. No, it is within the general sweep of the legislation. There is no specific case that holds this, but we feel that is the position on it.

Senator MATHIAS. Do you feel that this is so necessary and desirable that you would support language to specifically give an extraterritorial effect?

Mr. JENSEN. Frankly, we think that can be taken care of by an expression of legislative intent. But if there is some concern, we would support that.

Senator MATHIAS. Now, the President is highly mobile, he is moving around. Today his duties as the moral leader of the people

require that he be constantly in different places, and before different audiences, and on different pulpits.

The same is hardly true of the No. 2 man in an executive department. Would you feel that the Federal preemption provision is applicable to Cabinet officers, to the No. 2 officer of the departments, of the members of the White House staff?

Mr. JENSEN. In our judgment that is why we recommended that there be a very specific definition of those persons. It includes that kind of perception that those are the persons who would be visible, vulnerable, and likely to be within the same category.

If you look at the list of the Cabinet officers, one can easily see that they also engage in a lot of travel—both national and international—and they are engaged in conduct which can be controversial and puts them into the category we feel ought to be protected.

Senator MATHIAS. If we protect them in the way that you recommend, does there have to be any act to trigger the Federal preemption? Does there have to be any action taken on the part of the Federal Government which suspends a State from its responsibilities?

Mr. JENSEN. The language in the statute is "assert." I do not think there is any definition underneath that. It seems to be very clear that the purpose was to trigger the preemption in the simplest kind of a way.

The point is that you cannot trigger it at the point where you file a charge, that is way too late in the investigative track. So, you want to trigger it by an assertion of that authority, and that could be accomplished simply by any kind of public proclamation, or announcement, or assertion, if you will, by the Director of the FBI.

Senator MATHIAS. So, if Judge Webster appeared on the scene and took charge, would that be an assertion?

Mr. JENSEN. I think it would be accomplished by a statement of his assertion, also, under the circumstances. But I think that does accomplish a de facto assertion.

Senator MATHIAS. For example, should the authority to preempt State and local jurisdiction be vested specifically in the Attorney General?

Mr. JENSEN. I think that could certainly be considered. As I say, I do not think that the present statutory language creates a significant problem. For purposes of consistency that could be done.

Senator MATHIAS. I do not know that consistency is necessary. But still, when you are talking about practice it is sometimes desirable. Maybe that is just a hangover from my Navy days that if you go through a drill, if you do it the same way every time, you are more inclined to do it right.

Let us hope we will not have occasion to utilize the provisions of this law very often.

Mr. JENSEN. Certainly.

Senator MATHIAS. But that might at least be considered.

Now, in your statement, as I understood it, you said that a distinction should be drawn between senior White House personnel and others—between the chiefs and the Indians. You suggested that Congress might consider including the latter under 1114, which is a kind of laundry list of Federal officials that are protected from murder and from assault.

But you say this, that "section 1114 introduces a host of additional issues and problems worthy of separate attention" and that intrigued my interest and curiosity.

Mr. JENSEN. Maybe it is not a "host" but it is an awful lot of individuals. When we specifically limit the present bill in our suggestion to level II employees, there is a finite group of persons.

Once you go to the definition that includes a nexus of performance of duty you necessarily include an awful lot more persons in numbers and coverage. We are now talking about resources and applicability of the statute. In investigative resources that is quite extensive.

There is also a problem of the definition that we are talking about right now that says, a nexus of official duty for those who are employees of the President or the Vice President. Section 1114 would necessarily include a contemplation of other Federal employees with that same kind of nexus.

That is the kind of a problem we are talking about; that as we look at this with a different nexus rather than your statutes, you would have to do a good deal of thinking as to the coverage and whether or not you wish to move beyond the suggestions in the bill; we would then be talking not just about employees of the President or the Vice President, but about other employees in the Federal Government.

### WHITE HOUSE OFFICIALS

Senator MATHIAS. When you talk about White House officials as sort of a category, people who are not particularly well known either by title or as individuals, does the absence of the official duties nexus have the possibility that we could overuse this statute?

Mr. JENSEN. It may. There are arguments that there ought to be both applied. We feel that with the finite definition of those covered in level II, that is a very specific number of persons; it is an arbitrary classification dependent upon their level. We think that is a very visible and vulnerable piece of the Federal Government.

If you look at the persons who occupy those positions, their names would immediately come to mind and they would be in such a position that we feel it is appropriate to use the independent jurisdiction.

Senator MATHIAS. Perhaps the committee might consider some report language that would help to clarify this.

Mr. JENSEN. Perhaps so.

Senator MATHIAS. If we get into that, we would appreciate your advice and counsel on it.

Mr. JENSEN. We would be happy to provide any such assistance.

Senator MATHIAS. Now, we have talked about the differences between senior White House officials and others. In their present form 351, covering Members of Congress, and 1751, covering Presidents and Vice Presidents, define the status of two separate categories. These are not identical but they are somewhat similar.

If 904 and 907 are enacted in their present form, the effect would be to continue the differences that exist between 1751 and 351, which are differences that involve the category of a crime. Simple

assault is a felony under 1751 but it is a misdemeanor under the other section.

Section 1751 authorizes the Attorney General to pay up to $100,000 for information. The other section has no such provision.

Does the Department intend that these differences shall be maintained, or should we embrace this opportunity to wipe out differences of this kind?

Mr. JENSEN. I think the committee could consider a removal of those differences. I do not see that there is any reason for the distinction. I think it is just a matter of historical development of statutes and that those differences really are such that they could be put into a consistent posture.

We did not address that simply because the bills did not address that. We could certainly agree that is an appropriate committee action.

Senator MATHIAS. If we do not do that, we are going to be in a kind of anomalous situation where the Attorney General would be able to authorize payments, rewards, for information about crimes against the staffers, but Cabinet members would not qualify for that kind of approach.

Mr. JENSEN. We would certainly want to maintain the definitional structure for assaults on the President. We do not feel that should be modified in any way. In effect, then, we would raise everything to that level.

As you point out, there could be some situations where it appears to be anomalous.

As far as awards are concerned or rewards are concerned, there is an ability administratively to address that by the Attorney General—not up to the level of $100,000 but to appropriate levels.

Senator MATHIAS. There is a section in 1751 and in 351 which is identical and that says,

> Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any federal, state or local agency, including the Army, Navy and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

That provision would still be intact, would it not?

Mr. JENSEN. Yes, that is the present law.

Senator MATHIAS. That would not be affected in any way.

Is this language equally applicable to cases involving Cabinet officers and Presidential aides?

Mr. JENSEN. Yes.

Senator MATHIAS. You have no problem with that?

Mr. JENSEN. No. That is the present law. With respect to the reference to triggering the investigative responsibility, all the bills do is extend the coverage to specific numbers of individuals.

Senator MATHIAS. Is this provision necessary in light of the general provision of the law against using any members of the military as a posse comitatus?

Mr. JENSEN. Posse comitatus?

Senator MATHIAS. Yes.

Mr. JENSEN. I think this is specific legislation that controls that. I do not think there is any problem with this kind of investigative effort at the present time. So, I do not think we are disturbing anything that exists presently.

Senator MATHIAS. How far does the phrase, "notwithstanding any statute, rule or regulation" go?

Mr. JENSEN. Well, if one can take the language at its face, it goes as far as its absolute expresssion. There could be interpretations. I know of no cases that interpret this. It would be unusual that one would get into a situation where it is interpreted by an appellate decision.

BANK PRIVACY ACT

Senator MATHIAS. What about the Bank Privacy Act, if that became a bar to investigation? Would it go that far?

Mr. JENSEN. I do not think that it changes any of the existing rules that apply to, say, the Federal Bureau conduct of investigations. This simply triggers their responsibility. It does not give them a new authority that does not exist in the law.

Senator MATHIAS. If they are working on John Doe's murder and they run up against the Bank Privacy Act, then they have to comply with that act?

Mr. JENSEN. That is exactly right.

Senator MATHIAS. You do not see that they have any greater authority in the case of a Presidential assassination.

Mr. JENSEN. Not at all.

Senator MATHIAS. As far as that kind of provision.

Mr. JENSEN. If there is any investigation for which they are responsible, the same legal construct that binds them as to any other area of investigation would be applicable here.

Senator MATHIAS. You would have no objection if the committee saw fit to try to clarify that to make sure that was the purpose?

Mr. JENSEN. I really do not think that it is necessary. I do not see that the language here poses any difficulty in this area. Perhaps the committee can consider that. The only language that goes beyond what might be considered otherwise investigative restrictions is that which refers to assistance by the Armed Forces.

Senator MATHIAS. So, your interpretation is that the "notwithstanding" clause really refers to the assistance, the physical assistance, of these various agencies and not to the extension of their authority.

Mr. JENSEN. Yes. I think there may be a problem if there were an attempt to impose some new definition, that you may find yourself in a situation where you freeze inadvertently a legislative kind of construct on an investigative law. A year from now, the laws may change and you would then have a problem about whether or not the investigation has to be carried out under the law that pertained at the time you put this into the legislative enactment.

SECRET SERVICE

Senator MATHIAS. We have not discussed yet what the impact of this legislation would be upon the Secret Service.

Mr. JENSEN. I tried to address that. I wanted to make sure there was no implication that expansion of the list of persons protected by these statutes would carry with it a mandate that there be Secret Service resources provided by way of physical protection.

It is our purpose, and we would think that the legislative intent would be, to leave the provision of physical protection to the pres-

ent law and present administration of the Treasury and Secret Service.

We do not mean to say that there is any new responsibility being imposed by these laws on Treasury or Secret Service.

Senator MATHIAS. By drawing these circles around categories you do create at least a perception of some difference in the statutes.

Mr. JENSEN. There is no question about that. As we say, you have now triggered a new investigative responsibility at the Federal level, that is correct. But we want to make it clear that we would think that the legislative intent is not to impose some mandatory duty on the Secret Service.

Senator MATHIAS. And so what you are telling us then is that insofar as those persons not covered by the Secret Service legislation in effect today, that this new legislation would have really a retroactive effect; it was after something had happened.

Mr. JENSEN. That is an unfortunate part of the criminal law in almost all of its definitions, that it does not come into play until the unfortunate event has occurred.

Senator MATHIAS. We are talking about picking up the broken crockery, which normally is an activity that is not the central concern of the Secret Service.

Mr. JENSEN. That is correct.

Senator MATHIAS. Now, title 18, United States Code, section 871 prohibits threats against the President and those in the line of succession to the Presidency.

As we are extending the assassination law to the Cabinet, to certain White House officials and to certain other officials, does the Justice Department think that the provision against threats should be extended in a parallel way?

Mr. JENSEN. I do not know that we have considered that. Almost implicit in the preface to this bill is that we are not suggesting that there be such an extension at the moment.

We could consider it, but I think that our position now is that virtually any kind of conduct we think is serious enough to come into this category where we are extending the Federal jurisdiction is covered here, and that we would not favor an extension to situations where threats were involved and to move those out into the new definitions.

### MEMBERS OF CONGRESS

Senator MATHIAS. And that would include Members of Congress?

Mr. JENSEN. It would. It is not covered now. It is not covered in 351; 351 is specifically defined.

Senator MATHIAS. It is not covered. It is not covered in 871, either, the question of threats.

Mr. JENSEN. There are of course—and this gets back to the State and local—there may be a crime committed at the State and local level where the target, the victim, is a Member of Congress.

Mr. PAULEY. There are existing statutes that do assert Federal jurisdiction over threats, but do not distinguish in terms of the status of the person threatened, if the mails are used, or an interstate facility is used.

Senator MATHIAS. Of course, if you attempted to restrict threats against Members of Congress, you would disrupt one of the favorite indoor sports of American citizens—"I am going to get you."

Mr. JENSEN. We hope that that is rhetorical.

Senator MATHIAS. Well, we hope it is rhetorical, but at every country fair or similar gathering that I have attended, there is usually somebody who feels deeply aggrieved about something that Congress has done. Whether in fact I have had any responsibility for that particular action or not, they like to voice their indignation and their collegiate accusation against any single Member of Congress who happens to be on the scene at the moment.

Mr. JENSEN. And having vented their spleen, we hope the conduct will not follow upon that action.

Senator MATHIAS. Well, it is always instructive and educational to go through an experience like that.

Mr. JENSEN. True.

Senator MATHIAS. The courts are in some disarray on the subject of whether—and it follows a little bit on my last comment—the courts are in some disarray as to whether the assailant must know his victim, must know that he is in fact a Federal officer in order to have triggered these sections.

I think of my good friend John Stennis, who was returning to his home after a late session of Congress in a lawful and peaceful manner, and virtually reached his own doorstep when he was assailed, robbed, and after he had turned over his wallet and his watch, he was then shot.

Now, I am not sure that the record of Senator Stennis' case is clear on whether or not the assailants had any idea in the world who he was. He was just a citizen who walked down the street who was the target of a hit.

Would the law be triggered in that kind of case, does there have to be a showing that there was knowledge?

Mr. JENSEN. Not within the present legislative construct. Now, you have raised a very specific difficulty because unfortunately a Senator can be a target just as any other person, for someone who does not realize he is a Senator.

By and large, this legislation is directed at attacks that are triggered by the fact of your status, and your position and your duties in the Government. However, it is just a question of having a statutory definition that takes care of that status and does not get into the issue of whether or not there is a frame of mind of the assailant that exculpates him from exclusion within the statute. It is a question of statutory construction.

Senator MATHIAS. Of course, we would assume that anybody who assassinated a President knew what he was doing.

Mr. JENSEN. Clearly.

Senator MATHIAS. And probably a Vice President. Not always, but probably.

Mr. JENSEN. That is correct.

Senator MATHIAS. Cabinet members, likely; but even lesser. When you get down into the garden variety, Members of Congress, it is lesser.

When you get into departmental personnel and low-level White House personnel who are covered here, it is quite possible that this question would arise.

Is there any desirability in trying to go back, because if I go back to practicing law some day and should acquire—I would hope not otherwise than by court appointment—a client in this category, it seems to me I would at least want to raise this as a defense.

Mr. JENSEN. I am sure that you would. You touch a very specific and difficult point. However, the fact that there is possible coverage—citing the Senator Stennis situation—that there is a concurrent jurisdiction, does not say there is a mandatory triggering of Federal responsibility. It requires an assertion of the Federal presence and that is a question of investigative choice and prosecutorial choice.

It may very well be that the choice that is made by the Federal prosecutor and the investigators is that this ought to be handled at the State and local level. It may be that your sanctions are even greater there for the conduct than are imposed here.

Now, I see nothing that says there has to be a triggering of Federal presence. I would think that that is a better way to address the subject matter than attempting to put something in that would be a matter of great difficulty of proof. We think that can be addressed by appropriate charge decisions and investigative decisions, and that we need not put it into the statute.

Senator MATHIAS. Here again a paragraph in the committee's report may be helpful.

Mr. JENSEN. It surely could.

Senator MATHIAS. We would invite your counsel on that.

I have tried this afternoon to raise all of the questions that might confront a trial judge in trying to administer this particular law. I would devoutly hope that the occasion will not arise, but I think we have really explored the full spectrum.

Does anything else occur to you that ought to be said, that might be helpful to someone who comes back and reads this transcript, and wonders whether the committee did explore the different possibilities?

Mr. JENSEN. We went over, of course, those areas we thought the committee would be interested in. I think it has been a most thorough discussion we have had. I cannot think of any significant issues that we have not touched upon.

The sponsor of one of these bills, the Senator from Indiana, Mr. Quayle, has submitted a statement to the committee and we will direct that that appear as a part of this record.

[The statement of Senator Quayle follows:]

PREPARED STATEMENT OF SENATOR QUAYLE

Mr. Chairman, on April 7, I introduced Senate Bill 904 to extend the protection of the Presidential Assassinations Act to staff members who travel with the President or the Vice-President on official business. As the wounding of press secretary James Brady in the March assassination attempt on President Reagan so tragically demonstrated, these staff members are often in danger equal of that of the President and the law enforcement officers assigned to protect him. I saw no reason to exclude such staff members from the protection of the full legal penalties of the Presidential assassination statute.

In drafting the bill, I used the phrase "traveling on official business with the President or Vice-President" so as to assert jurisdiction over all instances when the

President is away from the White House. The four presidential assassinations that have been attempted over the last 18 years have all occured at such times. However, the Justice Department is certainly correct in envisioning a situation where there is, say, a sniper attack on a Presidential residence and some presidential aide is injured or killed in the assassination attempt. Therefore, I would be quite comfortable in amending the bill so as to specify that federal jurisdiction is asserted when the assault is committed in order to interfere with, or as a result of, the victim's performance of duties as an employee of the President or Vice-President.

The Justice Department also suggests that coverage be limited to "only a small group of executive level Presidential and Vice-Presidential aides, possibly as determined by pay status or some other easily ascertainable standard." I do not think that this further amendment of S. 904 is necessary. The intent of the bill is to assert federal jurisdiction over all Presidential and Vice-Presidential Staff members who by the circumstances of their employment are placed in physical danger similar to that experienced by the President, Vice-President, and the law enforcement officers assigned to their protection. I feel that it is appropriate to include even such minor Presidential or Vice-Presidential aides as cooks, maids, and valets who might be injured or killed in the performance of their duties or as a result of their status as employees of the President or Vice-President.

Finally, I have also taken note of the Justice Department's view that the mandatory sentencing provision of S. 904 is unnecessary. While I agree that the courts are unlikely to exhibit leniency by awarding a concurrent, probationary or suspended sentence to a person convicted under the Presidential Assassinations Act, I feel that they should be statutorily prohibited from doing so. Mandatory sentencing is one way to express our rage about assaults on the social order and to deter their repetition. There is no place more appropriate than the Presidential Assassinations Act to include a mandatory sentencing provision.

Senator MATHIAS. Thank you. We will keep the record open for 1 week—if a week will be time enough, they are not that voluminous. We will keep the record open for a week for those responses and for any additional material that may be submitted for the record.

If you have nothing further, we are very grateful to you for coming down and enlightening us on this rather unusual area of the law. It is an unhappy reflection on our times that we have to occupy ourselves with that.

Mr. JENSEN. I share that sentiment. I appreciate this opportunity to present our views. Thank you, Mr. Chairman.

Senator MATHIAS. Thank you very much.

[The prepared statement of Mr. Jensen follows:]

# Department of Justice

STATEMENT

OF

D. LOWELL JENSEN
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

UNITED STATES
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ON

S. 904 and S. 907

SEPTEMBER 22, 1981

I am pleased to be here to present the views of the Department of Justice on S. 904 and S.907, bills that are designed to create federal jurisdiction over serious crimes against Cabinet officers and Presidential staff. Currently, the President, the Vice President, and members of Congress are covered by federal statutes against murder, kidnapping, and assault, but the officials addressed in these two bills enjoy no comparable protection; such crimes against Cabinet members and Presidential aides today may be proceeded against only under applicable State laws or the District of Columbia Code. The Department of Justice firmly believes that there is a strong federal interest in vindicating crimes of violence directed at high level federal officials, and therefore while we will suggest ways in which the language of these bills may be improved, we support the concept of both S.904 and S.907. Cabinet officers and senior White House aides are key members of the Executive Branch who preside over whole departments of government and/or directly advise the President on matters of policy. Of necessity these federal officials become concerned with controversial issues and become easily recognized by large numbers of persons -- factors which can, unfortunately, make them a target for a terrorist or a disturbed individual. The importance to the United States government of the duties performed by these officials, coupled with their high visibility and vulnerability, in our view make it appropriate and important that violent criminal acts against them be subject to federal sanctions.

Turning now to the specific provisions of the bills, S. 904 would amend section 1751(a) of title 18 which presently makes it a federal crime to kill the President, the President-elect, the Vice President, or the person next in line to the Presidency if there is no Vice-President. Section 1751 also covers the kidnapping, attempted killing or kidnapping, conspiracy to kill or kidnap, and assault on the persons listed in section 1751(a). S. 904 would add to the list of protected persons, "any person traveling on official business with the President or Vice President who is employed to assist such President or Vice President." In addition, S. 904 would amend the penalty for the murder or manslaughter of any person listed in section 1751(a) by prohibiting a suspended, concurrent, or probationary sentence for anyone convicted of a violation of that section.

While we believe there is a definite federal interest in protecting senior Presidential and Vice-Presidential aides, the scope of protection afforded by S. 904 is, in our view, in one sense too narrow in that it would be limited to instances where they were attacked while accompanying the President or Vice-President on official business. On the other hand, the range of persons covered by S. 904 is overly broad since it would cover attacks on lower level employees who frequently are part of a Presidential party on extended trips. While there may well be merit in asserting federal jurisdiction over some attacks on such persons, such jurisdiction, we believe, should be limited to situations where the assault was to interfere with or as a result of the victim's performance of duties or status as a

Presidential employee. Jurisdiction over crimes against non-senior Presidential or Vice-Presidential aides could more appropriately be accomplished by an amendment to 18 U.S.C. 1114 which presently contains a long list of federally employed persons such as law enforcement officers and judges protected from murder or assault while engaged in or on account of their performance of official duties. Since, however, amendment of 18 U.S.C. 1114 introduces a host of additional issues and problems worthy of separate attention, the Committee may wish to reserve this subject matter for another occasion and confine this legislation to those specially important categories of persons who should be protected by federal law against violent acts irrespective of any other "federal nexus" for the crime such as the performance of official duties.

Thus, for purposes of this legislation we would recommend that federal jurisdiction over attacks on Presidential and Vice Presidential aides be limited to the most senior officials and that federal jurisdiction should attach without a showing that an attack occurred while he was accompanying the President or was connected with the victim's official duties. Showing that the attack was motivated by the victim's duties is an element that will likely be present but that could be difficult to prove in a particular case. As with the protection afforded members of Congress in 18 U.S.C. 351, the official duty nexus should not be required. Specifically, we would suggest that protection be given to persons employed in the Executive Office of the President or in the Office of the Vice President authorized to receive pay

equal to that which applies for positions at level II of the Executive Schedule. The President is authorized to appoint 25 such persons and the Vice President five. 1/ At present, less than twenty persons would be covered, all but one in the Executive Office of the President.

S. 907 would amend section 351 of title 18, United States Code, to extend to each Cabinet officer, defined as a member of the executive branch of government who is the head of a department listed in 5 U.S.C. section 101, the protection presently accorded by section 351 to Members of Congress, and Members-of-Congress-elect. The effect of this bill would be to create federal jurisdiction over the offenses of murder and kidnapping (and attempts and conspiracies to commit these crimes), as well as assault directed at Cabinet officers. For the reasons previously stated, we strongly support this proposal, which was also, we note, included in S.1722, the Criminal Code Reform bill approved by the Committee last Congress.

We have two substantive suggestions regarding the provisions of S. 907. First, we urge that in addition to Cabinet officers, the second ranking official in each department should be covered. The second ranking official in each department frequently acts for the Cabinet officer and generally shares his or her high responsibilities. This person is the one in each department designated to act for the head of that department in accordance with a delegation of authority or succession order. Specifically,

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1/ 3 U.S.C. 105, 106.

we suggest that section 351(a) be amended so that its coverage includes "a member of the executive branch of government who is the head of a department listed in section 101 of title 5 or the second ranking official in such department."

Second, when considering this legislation, we recommend that the Committee take note of the fact that an attack on a Supreme Court Justice is not now a federal crime. While section 1114 includes the killing of "any judge of the United States" (when engaged in or on account of his official duties) that term in our view likely does not include Supreme Court Justices. See 28 U.S.C. 451. 2/ In our view, Supreme Court Justices, as the highest ranking representatives of the Judicial Branch of our government, and persons formally nominated to fill vacancies on that Court should have the same protection as the President, Vice

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2/ Judges of the United States were first included in section 1114 in the 1948 recodification of title 18, United States Code. The House Judiciary Committee Report notes that judges were added to the section, along with United States Attorneys and their assistants and officers of federal penal and correctional institutions, "in view of the obvious desirability of such protective legislation." H. Rep. No. 304, 80th Cong., 1st Sess., p. A90. The type of officials covered - judges, prosecutors, and prison officers - suggests that it was Congress' intent to add protection for those government officials most likely to come into routine personal contact with defendants or witnesses. Such a category would not include Supreme Court Justices.

President, and members of Congress. A proposal to accord Supreme Court Justices such protection was also included in last year's Federal Criminal Code Revision bill favorably reported by the Committee and is embodied in this year's Code Reform measure recently introduced as S. 1630. This coverage could perhaps best be accomplished by adding a new section at the end of chapter 51 of title 18 specifically proscribing the killing, kidnapping or assault (or an attempt or conspiracy to do so) upon a Justice of the Supreme Court or a nominee.

The extension of federal protection from attacks to senior Presidential staff members and Cabinet officers is clearly desirable, and it is our hope that the Committee will quickly consider and favorably recommend S. 904 and 907 with the changes we have suggested.

Mr. Chairman, that completes my statement and I would be pleased to try to answer any questions that members of the Committee may have.

Senator MATHIAS. The committee stands adjourned.

[Whereupon, at 3:40 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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